

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SPECTRUM PHARMACEUTICALS, INC, et al,)
Plaintiffs,) Case No. 2:12-cv-00111-GMN-NJK
vs.)
SANDOZ INC.,) ORDER GRANTING MOTION TO
Defendant.) SEAL
) (Docket No. 296)

Pending before the Court is Defendant's motion to seal. Docket No. 296. The motion seeks to file under seal portions of Defendant's Motion in Limine to exclude the Testimony of Rolf Henel and Exhibits 1-2 attached to the Declaration of Jessica A. Roberts in Support of Defendant's Motion in Limine (sealed version: Docket No. 298; public version: Docket No. 297).

Defendant submitted the Declaration of Anders T. Aannestad in support of its motion to seal. Docket No. 296-1. Defendant represents in its motion that its sole ground for filing Exhibits 1-2 under seal, and for the redactions, is the designation of the materials by Plaintiffs as confidential or outside counsel eyes only, pursuant to the parties' Protective Order. Docket No. 296, at 2; Docket No. 296-1, at 2. Therefore, on December 19, 2014, and in compliance with prior instructions from the Court, Plaintiffs filed the Declaration of Mark H. Izraelewicz in Support of Defendant's motion to seal. Docket No. 304.

I. STANDARD

The Ninth Circuit has held that there is a strong presumption of public access to judicial records.

²⁸ See *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm*

1 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to file documents under seal
 2 bears the burden of overcoming that presumption. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678
 3 (9th Cir. 2010) (quoting *Kamakana*, 447 F.3d at 1178). Parties “who seek to maintain the secrecy of
 4 documents attached to dispositive motions must meet the high threshold of showing that ‘compelling
 5 reasons’ support secrecy.” *Kamakana*, 447 F.3d at 1180.¹ Those compelling reasons must outweigh the
 6 competing interests of the public in having access to the judicial records and understanding the judicial
 7 process. *Id.* at 1178-79; *see also Pintos*, 605 F.3d at 679 & n.6 (court must weigh “relevant factors,”
 8 including the public’s interest in understanding the judicial process). The Ninth Circuit has indicated
 9 that “‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing
 10 court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as
 11 the use of records to . . . release trade secrets.” *Kamakana*, 447 F.3d at 1179.

12 II. ANALYSIS

13 In his Declaration, Izraelewicz represents that Exhibit 1 attached to the Declaration of Jessica
 14 A. Roberts (“Exhibit 1”) is comprised of excerpts from the deposition transcript of Plaintiffs’ expert,
 15 Rolf Henel, and that Exhibit 2 attached to the Declaration of Jessica A. Roberts (“Exhibit 2”) is Rolf
 16 Henel’s Rebuttal Expert statement. Docket No. 304, at 2. Izraelewicz further represents that, if this
 17 information were to be publicly disclosed at this point, such disclosure could injure Plaintiffs’
 18 competitive posture in a companion case (the “Eurohealth Litigation,” 2:14-cv-980-GMN-PAL²) that
 19 involves the same, or similar, invalidity arguments as this litigation. *Id.*, at 2-3. *See also* Docket No.
 20 242, at 3. Izraelewicz states that these two exhibits “cannot reasonably be redacted while leaving any
 21 meaningful information available to the public.” *Id.*, at 3. Finally, Izraelewicz represents that the
 22 redacted portions in Defendant’s motion “contain quotes from Exhibits 1 and 2,” and that “[t]he same

24 1

25 *Kamakana* and *Foltz* involve non-parties’ attempts to obtain sealed court documents. The same
 26 analysis and standards apply to a party’s motion to seal. *See Pintos*, 605 F.3d at 679 n.5; *see also*
 27 *Kamakana*, 447 F.3d at 1182 n.9 (for the case before it, noting that “[t]he effective bottom line is that
 the district court was determining whether documents should be sealed”).

28 ²Formerly known as the Ben Venue Litigation.

1 reasons that support sealing Exhibits 1 and 2 support sealing the redacted portions of [Defendant's]
2 motion. *Id.*

3 Izraelewicz requests that the Court seal the redacted portion of Defendant's motion in limine,
4 as well as Exhibits 1 and 2 in their entirety, until such time as Plaintiffs have served Mr. Henel's expert
5 statement upon opposing counsel in the Eurohealth Litigation. *Id.* Izraelewicz further notes that the
6 Court previously sealed expert reports in the instant case, based on the same argument. *Id.*, at 3; *see also*
7 Docket No. 242, at 2-3. Additionally, Izraelewicz submits that Plaintiffs "will file unredacted versions
8 of [Defendant's] motion [in limine], and Exhibits 1 and 2 ... in the public record one day after Plaintiffs
9 serve Mr. Henel's expert statement upon opposing counsel in the Eurohealth litigation." Docket No.
10 304, at 3.

11 The Court has reviewed the redacted portions of Defendant's motion in limine, as well as
12 Exhibits 1-2 in their entirety, and concludes that they contain information that could injure Plaintiffs'
13 competitive posture in the Eurohealth Litigation, which warrants keeping them sealed at this time.
14 Further, the Court finds that good cause exists to seal this information that overcomes the presumption
15 of public access, and that Exhibits 1-2 cannot be easily redacted while leaving meaningful information
16 available to the public.

17 **III. CONCLUSION**

18 **IT IS ORDERED THAT** for the reasons discussed more fully above and for good cause shown,
19 the Court **GRANTS** Defendant's motion to seal. Docket No. 296.

20 **IT IS FURTHER ORDERED THAT**, within one day of serving the opposing party in the
21 Eurohealth Litigation with Mr. Henel's expert statement, Plaintiffs must file unredacted versions of
22 Defendant's motion in limine and Exhibits 1-2 on the public docket in the instant case.

23 **IT IS SO ORDERED.**

24 DATED: December 29, 2014.

25
26
27 
28 NANCY J. KOPPE
United States Magistrate Judge